

POWER OF ATTORNEY

COPY

On behalf of The University of Pittsburgh - of the Commonwealth System of Higher Education, a nonprofit corporation, having a principal place of business at 911 William Pitt Union, Pittsburgh, Pennsylvania 15260, being the assignee of and owning all right, title and interest in the invention entitled "COLD-ADAPTED EQUINE INFLUENZA VIRUSES," for which application for Letters Patent of the United States has been made by Patricia W. Dowling and Julius S. Youngner, said application being filed on February 16, 2000, receiving Serial No. 09/506,286, and further identified as Attorney File No. EQ-1-C2, we, Patricia W. Dowling and Julius S. Youngner, of the School of Medicine, The University of Pittsburgh, hereby appoint Carol Talkington Verser, Registration No. 37,459; Timothy L. McCutcheon, Registration No. 41,184; and Mary K. Breen, Registration No. 43,512; of HESKA CORPORATION, 1613 Prospect Parkway, Fort Collins, Colorado 80525, telephone number (970) 493-7272, as attorneys and agents for The University of Pittsburgh - of the Commonwealth System of Higher Education with full powers of substitution, association and revocation to prosecute the application and related U.S. and foreign applications and to transact all business in the United States Patent and Trademark Office and all foreign and international patent offices connected therewith.

Dated: June 1, 2000

By: Patricia W. Dowling  
Patricia W. Dowling, Ph.D.  
Research Associate Professor  
Dept. of Molecular Genetics and Biochemistry

Dated: June 1, 2000

By: Julius S. Youngner  
Julius S. Youngner, Sc.D.  
Distinguished Service Professor  
Dept. of Molecular Genetics and Biochemistry

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RULE 63 (37 CFR § 1.63)  
DECLARATION  
FOR PATENT APPLICATION  
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

As a below named inventor, I hereby declare that my residence, post office address and citizenship are as stated below next to my name, and I believe I am an original, first and joint inventor of the subject matter which is claimed and for which a patent is sought on the invention entitled "COLD-ADAPTED EQUINE INFLUENZA VIRUSES," the specification of which was filed with the U.S. Patent and Trademark Office on February 16, 2000, receiving Serial No. 09/506,286 and further identified as Attorney File No. EQ-1-C2.

I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment referred to above. I acknowledge the duty to disclose information which is material to patentability in accordance with 37 CFR §§ 1.56(a) and (b) as set forth on the attached sheet indicated Page 3 hereof and which I have read.

I hereby claim foreign priority benefits under 35 U.S.C. 119/365 of any foreign application(s) for patent or inventor's certificate listed below and have also identified below any foreign application for patent or inventor's certificate having a filing date before that of the application on which priority is claimed:

Prior Foreign Application(s)			Priority Claimed	
<u>Number</u>	<u>Country</u>	<u>Day/Month/Year Filed</u>	<u>Yes</u>	<u>No</u>
PCT/US99/18583	PCT	August 12, 1999	Yes	

I hereby claim the benefit under 35 U.S.C. 120/365 of all United States and PCT international applications listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in such prior applications in the manner provided by the first paragraph of 35 U.S.C. 112, I acknowledge the duty to disclose information material to patentability in accordance with 37 CFR §§ 1.56(a) and (b) which occurred between the filing date(s) of the prior application(s) and the national or PCT international filing date of this application:

<u>Application Serial No.</u>	<u>Filing Date</u>	<u>Status: patented, pending, abandoned</u>
09/133,921	8/13/98	Pending

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

- 1) Inventor's Signature Patricia W. Dowling Date June 1, 2000  
Inventor's Name (typed): Patricia W. Dowling  
Citizenship: U.S.A.  
Residence: ~~Amberson Towers, Apt. 220~~ 8 Shadyside Lane  
~~5 Bayard Road~~ Pittsburgh, PA  
~~Pittsburgh, PA 15213~~ 15232  
Post Office Address: Same As Residence *OKS*
- 2) Inventor's Signature Julius S. Youngner Date June 1, 2000  
Inventor's Name (typed): Julius S. Youngner  
Citizenship: U.S.A.  
Residence: 5831 Marlborough Ave.  
Pittsburgh, PA 15217  
Post Office Address: Same as Residence

37 CFR §§ 1.56(a) and (b)  
DUTY TO DISCLOSE INFORMATION MATERIAL  
TO PATENTABILITY

(a) A patent by its very nature is affected with a public interest. The public interest is best served, and the most effective patent examination occurs when, at the time an application is being examined, the Office is aware of and evaluates the teachings of all information material to patentability. Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section. The duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned. Information material to the patentability of a claim that is cancelled or withdrawn from consideration need not be submitted if the information is not material to the patentability of any claim remaining under consideration in the application. There is no duty to submit information which is not material to the patentability of any existing claim. The duty to disclose all information known to be material to patentability is deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by §§ 1.97(b)-(d) and 1.98. However, no patent will be granted on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct. The Office encourages applicants to carefully examine:

(1) prior art cited in search reports of a foreign patent office in a counterpart application, and

(2) the closest information over which individuals associated with the filing or prosecution of a patent application believe any pending claim patentably defines, to make sure that any material information contained therein is disclosed to the Office.

(b) Under this section, information is material to patentability when it is not cumulative to information already of record or being made of record in the application, and

(1) It establishes, by itself or in combination with other information, a prima facie case of unpatentability of a claim; or

(2) It refutes, or is inconsistent with, a position the applicant takes in:

(i) Opposing an argument of unpatentability relied on by the Office, or

(ii) Asserting an argument of a patentability.

A prima facie case of unpatentability is established when the information compels a conclusion that a claim is unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability.\*

\*Note, 37 CFR §1.97(h) states: "The filing of an information disclosure statement shall not be construed to be an admission that the information cited in the statement is, or is considered to be, material to patentability as defined in §1.56(b)."